

NO. 48710-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

GREGORY ANTONIO WRIGHT, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.15-1-00085-3

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. The evidence is sufficient to sustain the jury's finding that Wright abducted Ms. Nystrom.**
- II. Although the State believes this issue is not ripe for review and that *State v. Sinclair* was wrongly decided, the State does not intend to seek a cost bill should it prevail in this appeal.**

STATEMENT OF THE CASE

Kristina Nystrom was a mental health therapist working for a health contractor at the Clark County Jail. RP 308-10. On January 13, 2015, she was working an evening shift from 3:00 p.m. to 9:00 or 9:30 p.m. RP 311. As part of her duties, she would see clients who request mental health counseling. RP 311. Her shift was proceeding normally until she was asked to see inmate Gregory Wright. RP 312. Inmate Wright claimed he was having stress and wanted to be seen by a mental health counselor. RP 313. Ms. Nystrom initially met Wright in the basement, in an open area designated for suicide watch. RP 313-14. There was a custody deputy in the room with them about ten to twelve feet away. RP 314. They spoke in that room for a few minutes, but Wright asked to be brought upstairs to the normal meeting room in which an inmate would meet with a mental health counselor. RP 315. The normal meeting room provides more privacy, with the guard remaining outside of the room

while the door remains open. RP 315. Wright claimed he wanted more privacy in which to speak to Ms. Nystrom. RP 315. The guard agreed that they could move to the regular medical treatment room upstairs and brought Wright up. RP 316. The room had an examination table, an EKG machine, medical books, and a large, heavy metal desk. RP 317. The defendant sat in a plastic chair while Ms. Nystrom sat in a swivel chair that allowed her to alternate between talking to the inmate and utilizing her computer. RP 317. The room they were in had no windows and a heavy metal door. RP 318. The door locked automatically when shut. RP 318.

The deputy brought Wright into the room and then went about his business. RP 320. The deputy did not enter the room with them. RP 320. Wright sat down and began talking with Ms. Nystrom. RP 320. The door was held open with a somewhat flimsy doorstop. RP 320-21. Although she worried that someone could easily remove the door stopper and close the door, she had never had any problems with inmates before and felt confident the guard would protect her. RP 321. They talked for about ten to fifteen minutes when Wright suddenly stood up and said "Well, what can you do for me then?" RP 324. Wright used a harsh, angry tone. RP 324. Ms. Nystrom thought Wright was going to leave the room. RP 324. However, Wright kicked the door stop out, pushed the door closed, and

punched Ms. Nystrom in the face with a closed fist. RP 325-26. Ms. Nystrom was standing when she was punched. RP 325. Ms. Nystrom was very frightened. RP 325. The punch threw Ms. Nystrom backwards and she landed on the floor. RP 326. Ms. Nystrom went into “red alert,” thinking that she had to get out of there. RP 326. She thought she might wet herself. RP 326. Wright was standing in between Ms. Nystrom and the door. RP 326. Ms. Nystrom got herself up while Wright came at her and put his hands around her neck. RP 327. She managed to squirm away. RP 327. Wright then pulled the desk in front of the door to block it from being opened. RP 327. It was a heavy, industrial type desk. RP 327. Ms. Nystrom threw herself against the desk in an effort to move it. RP 327. She was screaming. RP 328. As she was behind the desk Wright grabbed her by the neck of her turtleneck sweater and tried to pull her across the desk. RP 328. She was aware that the guards were outside the door trying to get in. RP 328. Ms. Nystrom estimated the assault lasted about one minute, but couldn’t be sure because it was a traumatic experience. RP 329. The deputies broke in and rescued her. RP 329. Ms. Nystrom had a bruise on her neck, a bruise on her arm, a cut on her finger, and a bruise on her leg. RP 330-31. She had also urinated on herself. RP 330.

Wright did not succeed in cutting off Ms. Nystrom's trachea or air passage. RP 339-40. Ms. Nystrom was in fear for her life during this assault. RP 349.

Duncan Paddy is a deputy with the Clark County Jail. RP 359-60. He was on duty January 13, 2015. RP 361. He was scheduled to work from 6:00 p.m. to 6:00 a.m.. RP 362. At around 6:10 p.m., he was in the "rover station" in the jail that was about fifteen to twenty feet from the medical room that Ms. Nystrom and Mr. Wright were in. RP 364. Deputy Paddy heard shrill screaming coming from a woman. RP 364. The screaming was constant. RP 364. Deputy Paddy, along with other deputies, immediately left the rover station in the direction of the screams. RP 365. He and four other officers proceeded to that area. RP 365. Initially, the deputies could not locate Ms. Nystrom. RP 366. They had to go to the medical unit to determine where the screams were coming from. RP 366. Deputy Paddy initially thought the screams were coming from his left and proceeded in that direction, only to find they weren't coming from there. RP 366. He determined that the screams were coming from the front office in the center, which is typically used for mental health sessions but also for medical treatments. RP 367. The screams continued unabated. RP 367. The only way to enter the room was with a key, and Deputy Paddy had one in his possession. RP 368. Of the many keys in his possession, the

first key he put in the door lock turned out to be the wrong key. RP 368-69. The second key he tried was the correct key. RP 369. Deputy Paddy initially decided to open the door slowly and quietly because he did not know what, precisely, was happening in the room and he wanted the element of surprise. RP 369-70. However, when he began to open the door it got pushed back against him from the inside and the door closed again. RP 370. The element of surprise now gone, Deputy Paddy dropped his shoulder against the door and hit it so hard that it flew open. RP 371. Deputy Paddy saw Ms. Nystrom, and she appeared to be in shock. RP 371. She was “white as a sheep,” and her “eyes were just huge.” RP 371. Wright stood about three or four feet away from Ms. Nystrom, and there were two desks in between Wright and Deputy Paddy. RP 372. The desks had been moved from their original positions. RP 373. Deputy Paddy lunged over the table at Wright so that he could get hold of him and pin him down. RP 373. Lunging over the table was the only option for reaching Wright based on the way Wright had positioned the desks. RP 373. Wright did not resist the takedown. RP 374. Wright was cool and calm after being apprehended. RP 376.

Jail Sgt. Grant Austin was also working the graveyard shift on January 13, 2015. RP 399. He was in the rover station when he heard panicked screams coming from the medical unit. RP 400-01. When they

eventually figured out which room the screams were coming from they found the door closed, which is unusual. RP 401. After the deputies made entry into the room, Sgt. Austin saw Ms. Nystrom and helped her out of the room. RP 403. Sgt. Austin told her "It's okay. I've got you. Come with me." RP 403. Sgt. Austin noticed that Ms. Nystrom's turtleneck sweater had been stretched out and pulled down from her neck area. RP 404-05. Sgt. Austin testified there is no surveillance camera in the medical room in which this crime took place. RP 406. The reason there are no surveillance cameras in the medical exam room is to maintain patient privacy. RP 453.

Deputy Stanley Yinger was on duty at the Clark County jail during this incident as well. RP 412. He was assigned to the medical unit of the jail. RP 411. One of his duties was to check on inmates in the medical unit. RP 411. Upon checking in for his 6:00 p.m. shift he went to the office located across from the exam room where the assault took place and relieved the day shift officer of duty. RP 412. He retrieved the keys from the day shift deputy and went to the rover unit to log in the keys and check them back out to himself. RP 412. Prior to heading over to the rover station Deputy Yinger saw Ms. Nystrom in the medical exam room with Wright. RP 413. At that time, the door was open. RP 413. As he was checking out the keys at the rover station, he heard terrified screams coming from outside the rover station. RP 414. The voice was female. RP

414. Yinger and the other deputies headed in the direction of the screams, and discovered them coming from the office containing Wright and Ms. Nystrom. RP 415. After making entry and getting Ms. Nystrom out of the room, Ms. Nystrom told Deputy Yinger that she was in pain from being punched in the face. RP 420.

Wright was convicted of kidnapping in the first degree and attempted assault in the second degree. CP 183, 186. The jury found the kidnapping in the first degree was done to facilitate the commission of assault in the second degree or flight thereafter. CP 188.

ARGUMENT

I. The evidence is sufficient to sustain the jury's finding that Wright abducted Ms. Nystrom.

Wright claims the evidence is insufficient to sustain the jury's finding that he abducted Ms. Nystrom by either secreting or holding her in a place she was not likely to be found or using or threatening to use deadly force upon her. See RCW 9A.40.010(1). Wright is incorrect.

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn.App. 789, 796, 137 P.3d 893 (2006). When determining whether there is sufficient

evidence to support a conviction, the evidence must be viewed in the light most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). If “any rational jury could find the essential elements of the crime beyond a reasonable doubt”, the evidence is deemed sufficient. *Id.* An appellant challenging the sufficiency of evidence presented at a trial “admits the truth of the State’s evidence” and all reasonable inferences therefrom are drawn in favor of the State. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

“Criminal intent may be inferred from circumstantial evidence or from conduct, where the intent is plainly indicated as a matter of logical probability.” *State v. Billups*, 62 Wn.App. 122, 126, 813 P.2d 149 (1991), citing *State v. Caliguri*, 99 Wn.2d 501, 506, 664 P.2d 466 (1983) and *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980); *State v. Vasquez*, 178 Wn.2d 1, 8, 309 P.3d 318 (2013).

The appellate court’s role does not include substituting its judgment for the jury’s by reweighing the credibility of witnesses or importance of the evidence. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). “It is not necessary that [we] could find the defendant guilty. Rather, it is sufficient if a reasonable jury could come to this conclusion.”

United States v. Enriquez-Estrada, 999 F.2d 1355, 1358 (9th Cir. 1993) (overruled in part on other grounds by *Gray v. Maryland*, 523 U.S. 185, 118 S.Ct. 1151 (1998), (quoting *United States v. Nicholson*, 677 F.2d 706, 708 (9th Cir. 1982)).

The determination of the credibility of a witness or evidence is solely within the scope of the jury and not subject to review. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). “The fact finder...is in the best position to evaluate conflicting evidence, witness credibility, and the weight to be assigned to the evidence.” *State v. Olinger*, 130 Wn.App. 22, 26, 121 P.3d 724 (2005) (citations omitted).

The evidence is sufficient in this case because Wright held Ms. Nystrom in a place she was not likely to be found during the commission of assault in the second degree, and because he threatened, by his conduct, to use deadly force. Wright relies entirely on *State v. Saunders*, 120 Wn.App. 800, 86 P.3d 232 (2004), for his claim that Wright did not hold Ms. Nystrom in a place in which she was unlikely to be found. The State agrees that *Saunders* is on point, but disagrees that it aids Wright’s claim. Rather, *Saunders* supports the State’s argument that Ms. Nystrom was held in a place she was unlikely to be found.

In *Saunders*, the defendant and his accomplice raped and murdered the victim who had driven to their house and accepted an invitation to come inside and socialize. *Saunders* at 806-08. During the crime Saunders placed the victim in leg shackles and handcuffs. *Saunders* at 816. The victim's body was found four days later on Saunders' living room floor, in plain view to anyone who entered the home. *Saunders* at 816. Saunders argued that because the victim voluntarily entered his home and her car was parked outside his home, visible to anyone who cared to look, and because her body was in "plain view" inside the home, she could not have been abducted. *Saunders* at 815-16. This Court rejected Saunders' argument:

Because Saunders left Grissett's body lying on the floor for more than four days, it was difficult to determine the exact chronology of events. But the evidence does show, contrary to *Green*,¹ that Saunders forcibly restrained Grissett by placing her in leg shackles and handcuffs and taping her mouth shut. She was in a private home where the public had no access to her, was not able to come to her aid, and, thus, was unlikely to find her.

Saunders at 816.

Like the victim in *Saunders*, Ms. Nystrom was restrained inside the medical room by both the desk barricade Wright constructed and by his threat to use deadly force on her by putting his hands around her neck. Ms.

¹ *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980).

Nystrom was alone in a room with her attacker behind a closed and locked door, with no surveillance camera to alert jail staff what was going on. The nearest deputy was some distance away in the rover unit, and if she had not been able to scream (which is the only thing that alerted the deputies to what was going on) Wright could have murdered her without anyone knowing until it was done. Wright focuses on the short duration of this event, as though that somehow vitiates the abduction. But Wright cites no case which holds that for an abduction to occur, the victim must be held in a place she is unlikely to be found *ever*. Indeed, such a reading of the definition of abduction would require the victim's death in every case as a precondition to finding that the victim was held in a place she was unlikely to be found. The correct reading of the definition of abduct is that the victim must be held in a place she is unlikely to be found for the duration of the time needed for the defendant to facilitate the commission of a felony or flight thereafter—which is the means of committing kidnapping that Wright was convicted of. By closing the door and locking her inside the room with him, and putting a desk in front of her path of escape, Wright abducted Ms. Nystrom.

Although this Court need not find sufficient evidence of both prongs of the definition of abduct, because definitional terms do not create a “means within a means,” (see *State v. Owens*, 180 Wn.2d 90, 96, 323

P.3d 1030 (2014)), the evidence was also sufficient to find that Wright threatened to use deadly force against Ms. Nystrom. A threat can be communicated directly or indirectly. See generally WPIC 2.24. It is difficult to imagine a more effective indirect, non-verbal threat of deadly force than the intent and preparedness to put one's hands around another person's neck—particularly when the one doing the threatening is an enraged man alone in a locked room with a terrified woman. Strangulation, when not interrupted, may result in death. A threat to strangle is a threat to use deadly force. The fact that Ms. Nystrom succeeded in escaping Wright's grasp does not negate the indirect threat of deadly force he conveyed by putting his hands around her neck in the first place and grabbing her by the collar of her turtleneck and trying to drag her over a desk into his waiting arms. Wright abducted Ms. Nystrom by both holding her in a place she was unlikely to be found and by threatening to use deadly force upon her. The evidence is sufficient to find that Wright abducted Ms. Nystrom.

II. Although the State believes this issue is not ripe for review and that *State v. Sinclair* was wrongly decided, the State does not intend to seek a cost bill should it prevail in this appeal.

The State does not intend to seek a cost bill should it prevail in this case.

CONCLUSION

The conviction should be affirmed.

DATED this 29th day of December, 2016.

Respectfully submitted:

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